

# What is Mediation

## Introduction

When a civil dispute is brought before the court to be resolved, the opposing parties will present their positions to the court in a hearing. A judge will decide the case on the evidence before him and by determining how the law is to apply. It can be a lengthy and expensive process to prepare and present a case for hearing and to have it determined by the court.

An alternative to resolving a dispute through the court system is mediation. The Judiciary has encouraged parties to use mediation in various aspects like family disputes, construction disputes, disputes between shareholders in company matters and disputes relating to building management. The procedure to be followed in referring cases in specialist lists to mediation is set out in the relevant Practice Direction.

The benefits of mediation are well recognised. Its use is not confined to specialist lists. This pamphlet helps you to understand what mediation is and how it works to your advantage.

## What is Mediation?

Mediation is a voluntary process in which a trained and impartial third person, the mediator, helps the parties in dispute to reach an amicable settlement that is responsive to their needs and acceptable to all sides.

The mediator brings the parties together face-to-face in a private and confidential setting. Each party will have the opportunity of putting forward his point of view and listening to what the other has to say. The mediator does not impose a decision on the parties.

The mediator will help the parties to:

- discuss and decide what matters are in dispute;
- explore each party's real needs and interests;
- expand settlement options and assess the most suitable solution;  
and
- draw up the settlement agreement in detail, setting out how the parties have agreed to resolve each matter in dispute.

## **Other Observations about Mediation**

Mediation is suitable in many cases although it may not be suitable for every case. Parties may be invited to attend a preliminary meeting in which the mediator will assess whether mediation is suitable for their particular circumstances, or their legal advisers may be able to help them to decide.

The parties may seek legal advice at any stage of the mediation.

All parties have the right to terminate the mediation process at any time.

All parties must appreciate that what the other party says in a mediation session is without prejudice and therefore cannot be used in any legal proceedings.

An agreement drawn up in a mediation session and signed by all parties is legally binding as a matter of contract. The agreement itself is not enforceable as a judgment, an order of the court, or an arbitration

award, but an innocent party may sue upon it if the other party is in breach of its terms.

## **What are the Advantages of Mediation?**

Experience worldwide has shown that mediation facilitates a high settlement rate and most people are satisfied with the outcome of mediation.

Mediation exhibits many advantages and include the following:

- parties may avoid the tension, conflict and risk in the adversarial court system;
- parties may save some time and money in not having to contest matters in court;
- mediation can start before any litigation or at any stage during the process of litigation;
- parties make their own decisions and reach agreements with which the parties may be more willing and ready to comply;
- the settlement terms can be kept private and confidential;
- mediation can result in terms of settlement of greater flexibility and in more practical ways going beyond the legal remedies that the court is empowered to grant;
- mediation can help maintain a continuing relationship among the parties or parties involved in the dispute and may even improve that relationship; and

- the chances of an appeal are greatly reduced, in contrast to litigation.

## Who are the Mediators?

There is no strict requirement of who can be a mediator. Mediators usually come from various professional backgrounds and have undergone training in mediation skills and techniques so that they know how to conduct the mediation process in unlocking negotiations that have become deadlocked and in keeping everyone focused on finding a solution.

As a rule of thumb, mediators:

- do not provide legal advice. Parties will be encouraged to consult their lawyers for such advice;
- do not take sides with any party;
- do not make decisions for the parties, but help them to assess the feasibility of the decisions that could be made.

## How can I Find a Mediator?

Various organisations in Hong Kong maintain their own list of mediators covering many areas and professional disciplines appropriate to the dispute in question. Some of these organisations are listed at the end of this pamphlet. Each organisation has its own requirements for placing a mediator on its list, such as requirements covering knowledge and skills in negotiation and dispute resolution. The parties can select from the lists and agree on a suitable mediator. In case of difficulty, they can

consider contacting a mediation provider organisation for assistance.

Mediators may also be required to abide by an Ethical and Professional Code of Practice of the organisation concerned. Rules are published by some organisations for conducting mediations.

## Does Mediation take a Long Time?

It depends on the complexity and number of issues that are going to be settled. The degree of the parties' cooperation and readiness to participate in the mediation sessions also count. If issues are not complicated and the process goes smoothly, it may only take one mediation session of a day or less for the parties to reach agreement. All in all, mediation is generally a far more expeditious form of dispute resolution when compared to arbitration and litigation. This is of enormous benefit to all parties especially in relation to costs.

## Confidentiality

Mediators are required to observe confidentiality in respect of all matters disclosed in the mediation session. When the parties agree to take part in mediation, they will be required by the mediator to sign an agreement to mediate that all mediation communication\* is confidential and must not be disclosed. They may be disclosed unless under specified circumstances, for example, with the consent of all parties and the mediator or where there are reasonable grounds to believe that the disclosure is necessary to prevent danger of injury to a person or of serious harm to the well-being of a child, or with the leave of the

---

\* Mediation communication means anything said or done, any document prepared, or any information provided for the purpose of or in the course of mediation.

court. Participants in mediation, including the mediators, must therefore comply with the general duty of confidentiality.

## Who Pays for the Mediation Service?

Some organisations may provide free mediation service in some instances. Otherwise, parties will have to pay if they receive the mediation service from a private mediator. Parties should consult their legal advisers about the likely cost of mediation, and compare it with the cost of litigation. Generally, mediation is cheaper and faster than litigation.

Charges in mediation mainly include the mediator's fees for his time and any room hire costs. It is usual for the parties to agree before the start of the mediation that they will be responsible to pay in equal shares. Of course, if a party decides to instruct lawyers, or other professional persons, to assist during the mediation, this party will be responsible for all of their particular charges.

## Sources of Further Information on Mediation

### **Integrated Mediation Office of the Judiciary**

Room 113, 1/F, Wanchai Tower, 12 Harbour Road, Wanchai, Hong Kong

Tel : 2180 8066

Fax : 2180 8052

Email : [mediation@judiciary.hk](mailto:mediation@judiciary.hk)

Website : [mediation.judiciary.hk](http://mediation.judiciary.hk)

**Integrated Mediation Office (West Kowloon) of the Judiciary**

2 Ying Wa Street, Sham Shui Po, Kowloon

Tel : 2388 3070

Fax : 2388 3073

Email : [mediation@judiciary.hk](mailto:mediation@judiciary.hk)

Website : [mediation.judiciary.hk](http://mediation.judiciary.hk)

**Joint Mediation Helpline Office**

Room 322, 3/F, Wanchai Tower, 12 Harbour Road, Wan Chai, Hong Kong

Tel : 2901 1224 / 3893 9069

Fax : 2899 2984

Email : [email@jointmediationhelpline.org.hk](mailto:email@jointmediationhelpline.org.hk)

Website : [www.jointmediationhelpline.org.hk](http://www.jointmediationhelpline.org.hk)

**Hong Kong Mediation Accreditation Association Limited**

Room 303, 3/F, West Wing, Justice Place, 11 Ice House Street, Central, Hong Kong

Tel : 2525 2381

Fax : 2524 2171

Email : [info@hkmaal.org.hk](mailto:info@hkmaal.org.hk)

Website : [www.hkmaal.org.hk](http://www.hkmaal.org.hk)

**Hong Kong International Arbitration Centre**

38/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong

Tel : 2525 2381

Fax : 2524 2171

Email : [adr@hkiac.org](mailto:adr@hkiac.org)

Website : [www.hkiac.org](http://www.hkiac.org)

**Hong Kong Mediation Council**

**c/o Hong Kong International Arbitration Centre**

38/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong

Tel : 2525 2381

Fax : 2524 2171

Email : [mediation@hkiac.org](mailto:mediation@hkiac.org)

Website : [www.hkiac.org](http://www.hkiac.org)

**The Chartered Institute of Arbitrators (East Asia Branch)**

**c/o Hong Kong International Arbitration Centre**

38/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong

Tel : 2525 2381

Fax : 2524 2171

Email : [ciarb@hkiac.org](mailto:ciarb@hkiac.org)

Website : [www.ciarbasia.org](http://www.ciarbasia.org)

**Hong Kong Institute of Arbitrators**

Room 308, 3/F, West Wing, Justice Place, 11 Ice House Street, Central,  
Hong Kong

Tel : 2311 0533

Fax : 2311 0229

Email : [enquiry@hkiarb.org.hk](mailto:enquiry@hkiarb.org.hk)

Website : [www.hkiarb.org.hk](http://www.hkiarb.org.hk)

**Hong Kong Mediation Centre**

Room 504, 5/F, West Wing, Justice Place, 11 Ice House Street, Central,  
Hong Kong

Tel : 2866 1800

Fax : 2866 1299

Email : [admin@mediationcentre.org.hk](mailto:admin@mediationcentre.org.hk)

Website : [www.mediationcentre.org.hk](http://www.mediationcentre.org.hk)



### **Hong Kong Bar Association**

LG2, High Court, 38 Queensway, Hong Kong

Tel : 2869 0210

Fax : 2869 0189

Email : [info@hkba.org](mailto:info@hkba.org)

Website : [www.hkba.org](http://www.hkba.org)

### **The Law Society of Hong Kong**

3/F, Wing On House, 71 Des Voeux Road Central, Central, Hong Kong

Tel : 2846 0500

Fax : 2845 0387

Email : [mediation@hklawsoc.org.hk](mailto:mediation@hklawsoc.org.hk)

Website : [www.hklawsoc.org.hk](http://www.hklawsoc.org.hk)

### **The Hong Kong Institute of Architects**

19/F, One Hysan Avenue, Causeway Bay, Hong Kong

Tel : 2511 6323

Fax : 2519 6011 / 2519 3364

Email : [hkiasec@hkia.org.hk](mailto:hkiasec@hkia.org.hk)

Website : [www.hkia.net](http://www.hkia.net)

### **The Hong Kong Institution of Engineers**

9/F, Island Beverley, 1 Great George Street, Causeway Bay, Hong Kong

Tel : 2895 4446

Fax : 2577 7791

Email : [hkie-sec@hkie.org.hk](mailto:hkie-sec@hkie.org.hk)

Website : [hkie.org.hk/en/membership/cdrc](http://hkie.org.hk/en/membership/cdrc)

## **The Hong Kong Institute of Surveyors**

Room 1205, 12/F, Wing On Centre, 111 Connaught Road Central,  
Sheung Wan, Hong Kong

Tel : 2526 3679

Fax : 2868 4612

Email : [info@hkis.org.hk](mailto:info@hkis.org.hk)

Website : [www.hkis.org.hk](http://www.hkis.org.hk)



Judiciary  
March 2023  
(6th Edition)



